UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:	:	
	:	Chapter 11
FTX TRADING LTD.,	:	
	:	Case No. 22-11068-jtd
	:	
Debtors.	:	(Jointly Administered)
_____	:	

United States Bankruptcy Court

824 North Market Street

Wilmington, Delaware

January 20, 2023

10:04 AM - 12:10 PM

B E F O R E :

HON JOHN T. DORSEY

U.S. BANKRUPTCY JUDGE

ECRO OPERATOR: JERMAINE COOPER

HEARING re Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Maintain a Consolidated List of Creditors in Lieu of Submitting a Separate Matrix for Each Debtor, (II) Authorizing the Debtors to Redact or Withhold Certain Confidential Information of Customers and Personal Information of Individuals and (III) Granting Certain Related Relief.

Transcribed by: Sonya Ledanski Hyde

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RYAN SIMS
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CATHERINE CHOE
BRENDAN SCHLAUCH
JOSHUA OLIVER
ETHAN TROTZ

MAX DAWSON
STANTON MCMANUS
RUTH RAMJIT
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SCOTT JONES
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ALEX SIMM
ANDREW GLANTZ
RAHUL SHARMA
NAVEEN PARMAR
DAVID HOLLEIGH

MICHELE WAN
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ALISON AMBEAULT
ERIN DIERS
SAMY SOLIMAN
DANIEL KAMENSKY

P R O C E E D I N G S

CLERK: All rise.

THE COURT: Good morning, everyone. Thank you. Please be seated.

Mr. Landis?

MR. LANDIS: Good morning, Your Honor, and may it please the Court. For the record, Adam Landis from Landis Rath & Cobb, Delaware co-counsel to the Debtors, FTX Trading Limited and the companion cases.

Your Honor, we filed this morning a second amended agenda at Docket 547. The amended agenda reflects a number of matters that have been consensually resolved and orders have been entered. Matter number four on the agenda is the Alvarez and Marsal application for retention. An order has been entered on that.

Matter number five is the AlixPartners application. A certification of counsel has been filed and the parties are in agreement with respect to the form of order.

Matter number six is the Kroll retention for which an order has been entered.

Matter number seven is the Quinn Emanuel application for retention for which a certification of counsel has been filed.

Those matters --

THE COURT: I did enter those, both the AlixPartners and the Quinn Emanuel.

MR. LANDIS: Thank you, Your Honor. And really it's through the good offices of the United States Trustee back and forth negotiations and discussions on a very cooperative basis, the Creditors' Committee weighing in, for which we are grateful on those efforts and we don't have a need to go forward with respect to those.

There is a status conference at the end of the agenda that we'll have. But the only item that is on the agenda that will need to be heard today is the Sullivan & Cromwell retention application. And for that, I will cede the podium to Mr. Bromley.

THE COURT: Okay. Thank you.

And before you begin, Mr. Bromley, let me just remind those on the Zoom call that this is a formal court proceeding even though you are participating by Zoom. So please leave your audio turned off and your video turned off unless you are recognized to speak.

And with that, Mr. Bromley, go ahead.

MR. BROMLEY: Good morning, Your Honor. May it please the Court. Jim Bromley of Sullivan & Cromwell on behalf of the FTX debtors. Your Honor, thank you very much for taking time today.

And I want to first describe the resolution that

we've achieved with the Office of the United States Trustee.

The Office of the United States Trustee had two objections to the retention of Sullivan & Cromwell. The first was that there was inadequate disclosure and the second had to do with the scope of the services that Sullivan & Cromwell as well as Quinn Emanuel and AlixPartners would provide.

We have been in conversations with the Office of the U.S. Trustee for three weeks. We've received a first inquiry with respect to our application on the 27th of December. The application was filed on the 21st of December. And as is common in large Chapter 11 cases, we have been in constant contact with the Office of the United States Trustee going back and forth with questions and answers and focusing on issues that the U.S. Trustee had identified with respect to disclosure.

I am happy to report, Your Honor, that notwithstanding the fact that when we sat here last time we were not yet in agreement with the U.S. Trustee, we have been able to bring that across the finish line. We have also been able to bring across the finish line a resolution with the Office of the United States Trustee to take the scope issue, which related to the three applications that were originally on today and to move them off and to reserve rights with respect to scope and effectively deal with any

issues after the examiner motion, which was scheduled for the 6th of February.

In connection with the disclosure issues with the Office of the United States Trustee, we have filed in the past couple of days two supplemental declarations of Mr. Andrew Dietderich, one of my partners at Sullivan & Cromwell. Mr. Dietderich had submitted the original declaration supporting the Sullivan & Cromwell application. And the second, very fulsome declaration which was filed a couple of days ago was the product of conversations that we have been having with the Office of the U.S. Trustee.

When we filed that, we were able to get on the phone with the U.S. Trustee, Ms. Sarkessian, and answer a few additional questions which we then submitted a further supplemental declaration of Mr. Dietderich yesterday.

So with that, Your Honor, we have been able to resolve any issues that the Office of the U.S. Trustee had with respect to Sullivan & Cromwell's disclosures.

I would like to note in the context of that, Your Honor, that one of the first things that we did when we were talking to Ms. Sarkessian was discuss the fact that Mr. Ron Miller, a former partner of ours at Sullivan & Cromwell, is employed at FTX US as the general counsel. That's West Realm Shires is the entity.

And that was not called out specifically in the

original declaration. It is now called out. Mr. Miller was listed as a party in Schedule 1 to Mr. Dietderich's original declaration, but we have called out with very clear specificity in a supplemental declaration Mr. Miller as well as Mr. Wilson, a former associate of ours, who also has a role at FTX. With those call-outs, the Office of the U.S. Trustee is satisfied with that disclosure with respect to Mr. Miller and Mr. Wilson.

And in retrospect, Your Honor, we should have gone further in the original declaration, but the fact is we were engaged in conversations with Ms. Sarkessian from December 27th with respect to this.

So there is also in the context of our recent filing a statement, the declaration of Ms. Kranzley, another one of my partners, with respect to back and forth between the U.S. Trustee's Office and Sullivan & Cromwell. In the context of that, Ms. Sarkessian wanted me to clarify that there was a set of emails that were provided as exhibits to Ms. Kranzley's declaration. And what was not noted in those emails, because it didn't appear in the emails, was that there was not a response to an email that Ms. Sarkessian had sent earlier, just as a matter of clarification.

So with these statements and the declarations, the two supplemental declarations that have been filed, it is our understanding that the U.S. Trustee's Office is

satisfied with the disclosures. That's reflected in the form of order that has been submitted to the Court.

THE COURT: Before you move on, let me just -- Ms. Sarkessian, do you want to...

MS. SARKESSIAN: Thank you, Your Honor. For the record, Juliet Sarkessian on behalf of the U.S. Trustee. We are resolved with Sullivan & Cromwell. I just want to clarify that the application and the initial application of Mr. Dietderich did not mention any connection with Mr. Miller. Yes, he was listed as a party in interest on a, you know, 15-page party in interest list, but there was no disclosure whatsoever about Sullivan & Cromwell having any connection with him, let alone that he was the individual who actually brought Sullivan & Cromwell to the attention of the Debtors when Mr. Miller had been a partner at Sullivan & Cromwell. He left and he went in-house to FTX US and at that point introduced Sullivan & Cromwell. That is in the supplemental declaration, but there was no information at all about -- excuse me, about Mr. Miller in the original.

And so we certainly appreciate Sullivan & Cromwell recognizing that that is something that absolutely should have been included in the original declaration. And I also want to clarify that was certainly not the only additional disclosure we asked for. There was quite a bit more. And you'll see that the first supplemental declaration that was

filed was -- I think it was 81 paragraphs, something of that nature. Some of that was in response to Mr. -- I think with respect to other objectors. But a good piece of that was disclosure that we asked for. So it was not just that one piece, it was quite a bit. And we did work with them and we are glad that they made those additional disclosures and we were able to resolve that issue. Thank you, Your Honor.

THE COURT: Thank you, Ms. Sarkessian.

I see Mr. McLaughlin has stood up. Do you have anything with regard to the resolution with the U.S. Trustee?

UNIDENTIFIED SPEAKER: No, Your Honor.

THE COURT: Okay. Why don't we wait. Mr. Bromley, why don't you go ahead. And then I'll turn to Mr. McLaughlin.

MR. BROMLEY: Thank you, Your Honor. Now that we've resolved the issues with the Office of the U.S. Trustee and noting that the Unsecured Creditors' Committee has filed statements of support, the only objection that is -- there are two objections that are remaining, from a Mr. Winter and a Mr. Brummond. They are represented by counsel here today. I would just like to before we get going on that, Your Honor, just give a short preview of the issues. And then I understand that they have certain things that they would like to say.

Your Honor, with respect to the matter before you today, we have two witnesses. We have Mr. Ray and Mr. Dietderich. They have both submitted declarations and supplemental declarations. And in Mr. Dietderich's case, a second supplemental declaration. We believe that the disclosure issues have been fully resolved. We have been, as I noted, in constant contact with the Office of the U.S. Trustee and exchanged voluminous amounts of information. We believe that the disclosure that has been filed and the supplemental disclosure is fully sufficient.

As Mr. Ray mentions in his declaration, what we're talking about here, Your Honor, is a need to move on. One of the things that the Debtors have been facing generally in these cases is assault by Twitter. It is very difficult, Your Honor, to cross-examine a tweet, particularly tweets that are being issued by individuals who are under criminal indictment and whose travel is restricted, so to speak.

THE COURT: I have the benefit of not being on Twitter, so I have no idea what people are saying on Twitter about this case.

MR. BROMLEY: Well, Your Honor, to a certain extent you are brought into it because of the objections that reference those things. And it is frankly difficult in these circumstances to try to respond to all of those things all at once. And so we have decided not to do so. Our view

is that the issue should be addressed in court in a formal manner and that those who have things to say should come to Court and say those things. Subject to cross-examination, subject to the rules of the court. And that is the way that we intend to proceed.

With respect to the application, Your Honor, I do note that there was a declaration, a document filed on the Court's docket last night, that is characterized as a declaration by an individual who is a former legal officer within the FTX group.

I know that Mr. Winter and Mr. Brummond's counsel have requested that this hearing be adjourned as a result of that filing. And, Your Honor, we are opposed to any such adjournment. We've already gone 70 days into these cases. An enormous amount of work has been done. There has already been an adjournment of these retention applications. We believe, Your Honor, that it is imperative that we put this stage of the case, the retention of professionals, aside, complete that, and move on to the next stage.

Now, we do know that we have an examiner motion that's been filed by the U.S. Trustee, and we will deal with that on February 6th. But the fact is, Your Honor, if there is an adjournment made as a result of the filing by Mr. Friedberg, which followed hot on the heels of two very long and rambling tweets that were filed by Mr. Bankman-Fried or

that -- not filed, I'm sorry, Your Honor, but posted and cited by objectors. I think it's virtually certain that such activity is going to continue and that if we simply agree to adjourn something today or Your Honor decided that it was appropriate, we would simply be faced by additional attacks on Twitter and additional random things that are filed.

Now, with respect to Mr. Friedberg's filing, that filing is not on behalf of any particular party. Mr. Friedberg claims to be a creditor, but he doesn't style it as an objection. It was filed last. It was filed -- frankly, it's a little bizarre if you sit down and read it. But, Your Honor, our view is that it has no place in the court, it should be stricken from the record, and the hearing should go forward with the two witnesses that we have to the extent that counsel for Mr. Winter and Mr. Brummond have any questions.

THE COURT: Let me hear from Mr. McLaughlin. It was his motion to continue the hearing.

MR. MCLAUGHLIN: Good morning, Your Honor. For the record, Jack McLaughlin of Ferry Joseph on behalf of Warren Winter and Richard Brummond, two objecting creditors. Your Honor, if I may introduce to the Court my co-counsel. With me today in court is Marshal Hoda of the Hoda Law Firm of Houston, Texas and Patrick Yarborough of Foster

Yarborough, also of Houston. They are lead counsel in this matter.

Mr. Hoda will be speaking on behalf of our position today first with regard to the emergency ex parte motion to continue the hearing vis-á-vis the Sullivan Cromwell application, and then on any argument the Court will take on the application proper.

THE COURT: Okay. Thank you.

MR. MCLAUGHLIN: Thank you, Your Honor. By the way, both have been admitted pro hac vice.

MR. HODA: Good morning, Your Honor. May it please the Court. My name is Marshal Hoda. I represent the individual objectors in this matter, Mr. Warren Winter and Mr. Richard Brummond. I appreciate the privilege of being able to appear before this Court pro hac vice today.

I would like to first address the emergency motion for an adjournment that we filed yesterday.

Your Honor, I am here on behalf of two individual depositors on the FTX and FTX US exchanges who collectively lost access to approximately $400,000 in assets as a result of the FTX collapse.

My clients have objected to the appointment of Sullivan & Cromwell as the Debtor's lead counsel because they have grave concerns about the firm's lack of transparency in its mandatory disclosures and its ability to

lead an objective investigation into the FTX Group's prepetition activities.

Yesterday, we filed an emergency motion for adjournment of the hearing on Sullivan & Cromwell's application that's set to go forward this morning. And that's what I'll speak about first.

I would like to start with a brief statement of the chronology which is helpful for context here. Sullivan & Cromwell filed its application to be appointed under Section 327 on December 21st, 2022. As we point out in our papers and as Ms. Sarkessian noted a moment ago, the original declaration of Mr. Dietderich that accompanied that application said essentially nothing about Sullivan & Cromwell's prepetition work, legal work for the FTX Group entities and disclosed that Sullivan & Cromwell had in fact performed eight-and-a-half million dollars approximately of legal work for the FTX Group entities, but said only, and I quote, that that work had been "with respect to acquisition transactions and specific regulatory inquiries relating to certain U.S. business lines." Nothing more.

Further, Mr. Dietderich's declaration did not disclose numerous other connections between Sullivan & Cromwell and the Debtors and the Debtor's attorneys as it expressly required under Bankruptcy Rule 2014, including that a former Sullivan & Cromwell partner, Mr. Ryne Miller,

was the general counsel at FTX US and one of the highest-ranking legal officers in the FTX group before its collapse.

Accordingly, we filed an objection on behalf of Mr. Winter on January 4th and later filed an amended objection that set out additional information about Sullivan & Cromwell's relationship with the Debtors available in the public record that was not reflected in Sullivan & Cromwell's disclosures.

The U.S. Trustee also filed an objection at that time, pointing out that Sullivan & Cromwell's disclosures were "wholly insufficient to evaluate whether Sullivan & Cromwell satisfies the Bankruptcy Code's conflict-free and disinterestedness standards."

As you've heard today, that has apparently been resolved. But that was the U.S. Trustee's opinion as well as ours at the time of the filing of the original Dietderich declaration.

On January 17th, less than 72 hours ago, Mr. Dietderich submitted his supplemental declaration in support of Sullivan & Cromwell's retention. That declaration sets out 34 pages of additional disclosures and exhibits relating to Sullivan & Cromwell's connections with the Debtors.

Yesterday, less than 24 hours ago, Mr. Dietderich submitted his second supplemental declaration, adding more facts to the mix. Finally, last night, Sullivan & Cromwell

submitted a revised proposed order changing the details of its proposed retention in this case.

Your Honor, we submit that this chronology shows gamesmanship. As both my clients and the U.S. Trustee recognized, Mr. Dietderich's original declaration was wholly inadequate to satisfy Sullivan & Cromwell's disclosure obligations. There is no excuse for a firm with the resources available to Sullivan & Cromwell to wait until less than 72 hours before the hearing on its application to make any substantive disclosures about its prepetition work for the Debtors and crucial disclosures concerning its own former partner's employment as one of the top legal officers of the FTX Group.

Nevertheless, Your Honor, we were prepared to go ahead with the hearing today and make our arguments based on the facts available to us. Then, yesterday afternoon around two p.m., a bombshell was lobbed into the docket in the form of the Friedberg declaration that you've heard about.

Mr. Friedberg, described in Mr. Dietderich's supplemental declaration as, "The senior legal officer of the FTX Group", submitted a 17-page declaration setting out what he described as "additional information about potential claims that the Debtors have against Sullivan & Cromwell, false statements made by Sullivan & Cromwell, as well as other misconduct."

To be clear, Your Honor, as we stated in our emergency motion, we had absolutely nothing to do with this declaration. I confirm that my clients did not, either. Although styled as being offered in support of the amended objection we submitted, the declaration was prepared and submitted without any solicitation or input from us whatsoever. We were as surprised by it as anyone else.

That said, the allegations in the Friedberg declaration are as relevant as they are explosive. The declaration outlines several claims Mr. Friedberg believes the bankruptcy estate has against Sullivan & Cromwell. It also outlines what the declaration characterizes as false statements in the Dietderich declarations and inappropriate conduct, alleged inappropriate conduct, by former Sullivan & Cromwell partner and high-ranking FTX Group legal officer, Ryne Miller. Crucially, the Friedberg declaration also avers that its author would testify competently to the facts set out there if given the opportunity.

Your Honor, we don't purport to vouch for the accuracy of any of the facts, allegations I should say, set out in Mr. Friedberg's declaration. Frankly, like everyone else, we've hardly had time to process them. But what's clear is that the matters raised in the Friedberg declaration are central to the question of whether Sullivan & Cromwell meets the standard for retention under Section

327 and has made the appropriate disclosures under Bankruptcy Rule 2014. We believe it's in the best interest of our clients and all stakeholders to have additional time to arrange testimony, secure a deposition, and to otherwise get to the bottom of this unexpected development.

To sum up on the emergency motion, I'll note that as the Court is of course aware, the bankruptcy system depends on the self-policing conduct of lawyers in making robust, timely disclosures. The failure to get this right at the outset can result in a lot of pain down the road. We believe the chronology we've laid out is sufficient reason for an adjournment and that there will be no prejudice to any one by adjourning the hearing on Sullivan & Cromwell's application for a brief period as the Court sees fit, perhaps to the February 6th omnibus hearing only a few weeks from now. Surely Sullivan & Cromwell can continue its work in the meantime and no harm will come to the estate.

With that, Your Honor, I conclude my argument on the emergency motion. I would be happy to take any questions the Court has.

THE COURT: No questions. Mr. Bromley, any response?

MR. BROMLEY: Yes, Your Honor. I take issue with much of what Mr. Hoda says.

The exercise that Sullivan & Cromwell went through

in crafting the supplemental disclosure is exactly the exercise that large firms who are debtors counsel go through in every large case. Right? We sat down with the Office of the U.S. Trustee for weeks going through information requests supplementing the disclosure.

The disclosure issues that were raised by Mr. Hoda in his objection were all addressed in the supplemental disclosures from Mr. Dietderich. We took Mr. Hoda's objection into account, his original objection and his amended objection. And every single one of the issues that he raised was addressed in the supplemental disclosure.

So from a disclosure perspective, the issues that were raised by his clients have been fully addressed. The question though is, well, what is happening really with respect to this random filing that is made by Mr. Friedberg? Who is Mr. Friedberg and why is he making that?

Well, one of the issues that we're facing, Your Honor, is that Sullivan & Cromwell is front and center in connection with what has been going on with the FTX Chapter 11 proceedings. And if you are part of the inner circle at FTX -- and that would include Mr. Friedberg -- then you have concern about the exercise that's going on. On a daily basis, Sullivan & Cromwell is cooperating with and providing information to federal criminal authorities and regulatory authorities. The individuals who were at and running and

making the decisions that have brought this company to its knees are rightly concerned that the information that is being provided to authorities could lead back to their doorstep.

So what we have here, Your Honor, is a gentleman who ran this company into the ground, Mr. Bankman-Fried, sitting in his parents' home in Palo Alto, California with an ankle bracelet on. Extradited from the Bahamas and charged with multiple crimes by the Southern District of New York U.S. Attorney's Office.

And when the U.S. Attorney for the Southern District announced that indictment, what did he say? One of the greatest frauds in history is what he said. He also announced that two of the founders, Mr. Wang and Ms. Ellison, had been indicted, pled guilty, and agreed to cooperate.

So if you're Mr. Bankman-Fried, or frankly Mr. Friedberg, there's a concern about what's going on and what could happen to them. They can't throw stones at the U.S. Attorney's Office, but they can throw stones at Debtor's counsel that's providing information to the prosecutors and the regulators. And that's exactly what's happening.

Mr. Hoda failed to note that he had sent me an email saying that he planned to call Mr. Bankman-Fried here as a testifying witness today. We, the Debtors, and

Sullivan and Cromwell are fighting a ghost when we have these accusations that are being made and no opportunity to cross-examine Mr. Bankman-Fried. Mr. Ray, who is here to testify, gave an interview to the Wall Street Journal this week. Mr. Bankman-Fried is immediately online criticizing what's been said. We provided a fulsome presentation to the Official Committee of Unsecured Creditors this week and for disclosure purposes posted that on the Court's docket. Mr. Bankman-Fried takes it, marks it up, and posts it, criticizing everything that we've done.

Mr. Bankman-Fried is behind all of this. And whenever we moved -- if we were to move this or ever moved, there is in my mind an absolute certainty that he is going to try to do something to get in the way. He is lashing out.

Now, as to Mr. Friedberg, I have to say he's got a checkered past. It takes a lot of guts for him to put something in writing that says I was the chief compliance officer at FTX. But if you read the declaration, it's a rambling declaration. Mr. Friedberg is not here. We would oppose him testifying. But this is simply an incendiary device to be thrown into the process.

From our perspective, Your Honor, everything that needs to be done in terms of disclosure has been done.

THE COURT: Go ahead.

MR. BROMLEY: And what we need to do now is to proceed with the evidence that is ready to be presented. And if Mr. Hoda has any cross-examination for Mr. Ray or Mr. Dietderich, then we should do that. But we shouldn't be pushing this off anymore to invite other folks to be filing things at the last moment and disrupting this exercise. This is a court of law. We should be following the rules. Our application has been on file. If anyone else wanted to file an objection, they could do so.

There are two things that I would note, Your Honor, in terms of numbers. There are almost 9 million creditors in this case. Two have objected. The Creditors' Committee is on board. The U.S. Trustee's Office is on board after an extensive interaction with the Debtors.

I would also note, as my son said last night, he sent me the statistics of the -- of Mr. Bankman-Fried's Substack postings. 12 million views, 1,300 likes. That's like one person at Lincoln Field sitting in the top-right corner saying go team and the entire rest of the stadium being empty.

THE COURT: All right. I'm going to deny the motion for a continuance. The declaration was filed, but Mr. Friedberg didn't file a motion. He didn't even file a joinder to a motion. He just filed a declaration saying that he was submitting a declaration in support of somebody

else's motion. That's not an appropriate -- procedurally it's not appropriate.

So -- and I've read the declaration, and frankly it's full of hearsay, innuendo, speculation, rumors. And it's certainly not something I would allow to be introduced into evidence in any event. And so I will deny the motion for a continuance and we'll go forward with the application. All right?

MR. HODA: Your Honor, if I can just make a note from the record. I think I would be remiss if I didn't --

THE COURT: You can come up to the...

MR. HODA: I apologize. I think I would be remiss if I did not note for the record that as Your Honor was speaking just then, Mr. Friedberg appeared twice on the Zoom screen here and waved his hand. He is apparently in virtual attendance at this meeting. Again, I feel as though I should apologize for the kind of circus aspect of his showing up in this way. Again, I am as surprised as anyone by this development. But I just feel that's a fact that I should note for the record so that it's preserved.

THE COURT: I understand. I did see him, and I did not recognize him intentionally because, as I said, he has not filed a motion, he has not joined any motion. He is simply trying to be a witness, I suppose. But witnesses are not allowed unless they're here live. So...

MR. HODA: Understood, Your Honor. As I said, purely noting for the record, we are prepared to go ahead with argument on the application and the objection. And I will take my seat once again.

THE COURT: Thank you, Mr. Hoda.

MR. BROMLEY: If I may just clarify for a moment. Mr. Hoda, you said you're ready to proceed with argument. Are you intending to cross-examine any witnesses?

MR. HODA: Yes. With the Court's permission, I would ask to cross-examine Mr. Friedberg if he's here on Zoom.

THE COURT: No. He can't testify if he's not here in person.

MR. HODA: With that clarification, we do not intend to call any witnesses. We'll be making arguments on the declarations that are in the record and the arguments that we've made in our objection.

THE COURT: So you're not calling any witnesses and not putting in any evidence.

MR. HODA: No.

THE COURT: All right.

MR. HODA: Just making our arguments based on the declarations.

THE COURT: And so you're going to move the introduction of the declarations.

MR. BROMLEY: Yes, Your Honor. I would like to move the admission of Mr. Dietderich's original declaration, his first supplemental declaration, and his second supplemental declaration as well as the first declaration of John J. Ray III and the supplemental declaration of John J. Ray III.

THE COURT: Is there any objection?

MR. HODA: No objection, Your Honor.

THE COURT: Those declarations are admitted without objection.

MR. BROMLEY: Thank you. Your Honor, I will proceed to argument then and reserve the right to respond to Mr. Hoda's arguments as well.

Your Honor, these cases were filed 70 days ago. The circumstances of the filing are well known at this point. Mr. Ray's declaration that was -- the so-called first day declaration which was filed in connection with the hearings that were held on November 22nd are -- is probably the most quoted first day declaration I've ever seen in my 33 years of practice. Indeed, Mr. Ray's first day declaration included language which was quoted in the New York Times top 25 quotes of 2022.

What we have here in the FTX situation is, as Mr. Ray said in his supplemental declaration, a dumpster fire. The founders of this company left the company abruptly in

early November in a state of chaos. What has happened as a result of that is that an army of advisors have had to come in and bring order. That army has been under the direction on a daily basis by Mr. Ray. As Mr. Ray has said in his declaration, as he said in his testimony before Congress, and as he said in his prepared remarks before Congress, Mr. Ray is a very hands-on leader. We are in meetings on a regular basis. Mr. Ray digs deep into the details and he relies on his advisors.

The advisors that are leading that charge on the legal front are Sullivan & Cromwell, supplemented by Quinn Emanuel and the Landis Law Firm here in Delaware. We've recently been joined on the scene by Mr. Hansen and the Paul Hastings firm. And we have been doing an enormous amount of work.

Among the work that we've been doing is to recreate and frankly create from scratch the structure that should have been there from the beginning. The work that's been done has yielded enormous results. When we were here on November 22nd, it was fair to say that Mr. Ray and the advisors were still in the earliest stages of trying to develop the information necessary to move these cases forward.

Now that we are 70 days into the case, we are much, much further along. And as Mr. Ray says in his

declaration, that could not have been done were it not for the efforts of all the advisors, but in particular Sullivan & Cromwell as lead Debtor's counsel.

Mr. Ray makes very clear in his supplemental declaration that any limitation or denial of retention with respect to Sullivan & Cromwell would be extraordinarily detrimental to the interests of creditors and stakeholders in these cases. And one of the things that we have done, as I noted earlier, is led the interaction with the regulatory and criminal authorities.

I've been doing this for a long time, Your Honor, but I have not been involved in a situation where the debtor itself has been treated as a crime scene. We are inundated on a regular basis by demands from multiple regulatory authorities, federal and state, as well as criminal authorities for all sorts of information on an expedited basis. The number of priority emails that we get from regulatory and criminal authorities is phenomenal.

In close coordination with Mr. Ray, we have been responding on an expedited basis to every one of those requests. And frankly, Your Honor, I think if it were not for that type of prompt and immediate response, we would not have seen the indictments and the plea agreements that we've seen to date. There's a lot more to do and the next stage of the case is about to begin. With us being joined by the

Creditors' Committee, we're ready to move on to that next stage. So I think that the justification for the continuation of the status quo with respect to Sullivan & Cromwell is manifest. The real question comes down to the legal standard, disinterestedness, and the holding of an adverse interest.

The disclosure that we have filed in my experience is the most fulsome disclosure that I have ever seen any debtor's counsel make in any case. We've gone down to extraordinary levels of detail to matters that are simply of a thousand dollars. We have listed every one of them out.

The concerns that have been raised have said, okay, one, Ryne Miller. He was a partner of Sullivan & Cromwell and he left the firm and took on a role as the general counsel of FTX.com. I mean, FTX US. I'm sorry. And that's West Real Shires is the corporate name.

Mr. Wilson was a former associate at Sullivan & Cromwell. He did not leave Sullivan & Cromwell to go to FTX, he left to go to the Fenwick & West law firm. Fenwick & West is the law firm that served as general outside counsel to FTX. From Fenwick & West, he then left and went to FT Ventures.

It is true that the firm has done work for certain FTX entities prior to the petition date. But that in and of itself, as caselaw is clear, is not in and of itself

disqualifying. Indeed, it's virtually unheard of for a major law firm who can handle the type of matters that are raised in a case of this complexity to not have a preexisting relationship.

I have been debtor's counsel in multiple cases over 30 years. I have never been debtor's counsel in a situation where my firm did not have a preexisting relationship with the debtors. So the mere fact that Sullivan & Cromwell had done work is irrelevant.

The question is whether or not any of that work goes to any of the issues that we're facing. And if so, how would it go to those issues. Is there anything about the work that we have done in the past or the relationships that we have that would be disqualifying. And the answer to that is no.

As Mr. Dietderich makes clear in his declaration, Sullivan & Cromwell has two types of clients. Our system, when you fill out a conflicts check when a client comes in, is you have to decide whether or not is this a regular client or is it a particular matters client. Why is there that distinction?

Well, a regular client is a client that we have a longstanding and broad-based relationship with where we do lots of different work for that client over a broad spectrum of matters. And in most circumstances, those clients have

been clients of the firm for years. In many circumstances for decades. On the other hand, we have particular matters clients. A particular matters client is somebody who comes in with a particular matter who asks for advice on a specific matter.

Now, why is there that distinction? Well, in our intake system, a regular client doesn't have to go through the same type of rigorous review that a particular matters client comes in. Because if we are dealing with one of those major clients -- and even though we're a firm with a long history, believe me, there's not all that many. You know that that big name client -- and I'm not going to disclose them, but you can imagine who they might be -- we know we don't have to focus as hard on that because it's a big and existing client.

Particular matters are different. And that's what we -- they are folks who come in, they ask for assistance on a particular matter. It then goes to our intake committee and the intake committee looks at that particular matter, we look at everything that it might touch on and relate to, and we make a decision with respect to that particular matter. Every single matter that came in from FTX, any FTX entity, was a particular matter.

Now, one of the things that Sullivan & Cromwell excels in transactional work and regulatory work. The

majority of the work that we did here for FTX fell into those categories.

Now, it's also important to look at the timeline of Sullivan & Cromwell's work with FTX. FTX, as we've told Your Honor, is not an entity that had a long history. The FTX world started in 2017 with the creation of Alameda, the hedge fund. Our work with FTX, any FTX entity, started in the summer of 2021. We had nothing to do with the establishment of Alameda, we had nothing to do with any of Alameda's operations. We had one matter that Mr. Dietderich was involved in with respect to the Voyager bankruptcy that Alameda was involved in. But we were not there when Alameda was established, we were not general corporate counsel to Alameda. We didn't have that type of relationship with Alameda. We had a particular matters relationship.

FTX.com, the international exchange, well, that entity is FTX Trading Limited. It was established in 2019, two years before Sullivan & Cromwell even came in contact with FTX.

FTX US, established in 2019. Again, two years before Sullivan & Cromwell got involved with FTX. We did not have anything to do with the creation of these entities, we didn't structure them, we didn't incorporate them. We didn't act as secretary on board meetings. We were not general outside counsel with respect to those entities. We

never represented any of the FTX entities in a capital raise. We never represented them in issuing debt. We represented them in specific transactional situations, none of which touch on any of the issues that have been raised to date.

Now, to the extent that anything comes out that there's a transaction that we may have been involved in might have an issue that needs to be investigated, we of course will not be involved in that. The Quinn firm is here, the Landis firm is here, and Paul Hastings is here. This is the standard way that large firms deal with these types of issues in cases of this magnitude. It is not surprising that creditors who are inexperienced with dealing with large corporate bankruptcies might say is that the way it really works. But, Your Honor, we know that is the way it works.

It was very clear to Mr. Ray when he decided, one, to file these Chapter 11 cases, and two, to retain Sullivan & Cromwell as 327(a) counsel that there would be a need for conflicts counsel. And so he immediately -- the first day or two of his occupying the office of Chief Executive Officer, he reached out to Quinn Emanuel, he interviewed them, and he hired them.

Now, we all know the reputation of Quinn Emanuel. This is not a firm that is a walk in the park. Quinn

Emanuel is a well-known, high profile and successful law firm. It is not all that common, frankly, to have large cases where there's a firm like Sullivan & Cromwell and a firm next to it like Quinn Emanuel. And Mr. Ray recognized that this was a special case and that he needed to have that type of support.

So when you're looking at the question of whether or not there is -- we hold an interest adverse to the estate, the disclosure makes clear that we do not. There's nothing in the record that indicates that Sullivan & Cromwell holds an interest adverse to the estate, and all of the disclosure demonstrates that we are a disinterested person.

Another thing that is raised by the objectors as a problem is the fact that Sullivan & Cromwell was paid for its work before the petition date and that it therefore -- the payments therefore somehow constituted preferences that are challengeable under the Pillowtex case. But we make clear in Mr. Dietderich's declaration every payment that was received within the 90 days, the amount of the payment, and the number of days that the bill remained outstanding. We reviewed all that with the Office of the United States Trustee. Your Honor, every one of those payments it's clear was made in the ordinary course. There was no antecedent debt that was paid off just prior to the filing. Because

that's what the Pillowtex case is about.

In that case, the Jones Day firm -- Your Honor, is there a way to -- it's kind of distracting to have -- thank you. I appreciate that.

THE COURT: You can turn your screen off too if --

MR. BROMLEY: Oh, can I? That's good. That's much better. Thank you. I was wondering if that was the Jones Day firm.

But in the Pillowtex case, the circumstances were all about an acceleration of payments on overdue bills that were made where payments were made on the eve of bankruptcy. That's not what happened here, as Mr. Dietderich's declaration shows in detail every amount, the number of days the amounts were outstanding or the bills were outstanding. So there's no preference issue here, Your Honor.

From our perspective, the objections of Mr. Winter and Mr. Brummond are resolved. There are disclosure questions. Every one of those questions has been answered. The main thing that they indicate was a lack of clarity with respect to Mr. Miller and Mr. Wilson. We have given absolute clarity with respect to both of them. A question with respect to the preference amounts, or the amounts that are payable within the -- that were paid within the preference period. We go through every single payment, including the time the invoices were outstanding, making it

clear that none of them are preferences. And then what was the other one?

With respect to -- just generally with respect to the matters, a lack of disclosure with respect to the description of matters, Mr. Dietderich goes very carefully through each of the matters and describes them. Right?

So we feel that we have made an enormous amount of disclosure, more than is generally done in these cases. We recognize that the exercise with the Office of the U.S. Trustee took longer than we would have liked, but we think it was a fulsome and successful exercise.

I've had few adversaries -- and I say this respectfully -- as relentless as Ms. Sarkessian. And I am tired of having dealt with her. You know? And I say that with the greatest amount of respect. We feel that everything that we have put in our disclosure now clearly satisfies the Office of the U.S. Trustee. And in my mind, that is the highest standard.

So, Your Honor, our view is that we have satisfied the disclosure requirements, that there's a clear and convincing argument for the retention of Sullivan & Cromwell, and we ask that the Court enter the order.

THE COURT: Thank you, Mr. Bromley. Anyone else with to speak in support before we go to the objectors?

MR. HANSEN: Good morning, Your Honor. Chris

Hansen with Paul Hastings, proposed counsel to the Official Committee.

Your Honor, we just briefly would say that the Committee stands by the statement that it filed with respect to the Sullivan & Cromwell retention application. The Committee is satisfied with the disclosures that they have made. We believe that an order should be entered today approving their retention, and we believe that the failure to do so would be extremely detrimental to these cases for many reasons and absolutely not in the best interest of the estates.

As we also said in our statement, Your Honor, the Committee intends to do the job that it's authorized to do under Section 1103(c)(2) of the Code, which is to investigate all of the financial affairs of the Debtors, including all of the fraudulent allegations. And that also includes the evaluation of all professionals who are involved with the Debtors on a prepetition basis. But that investigation doesn't need to preclude the retention of Sullivan & Cromwell here today.

As we noted in our statement, retention doesn't grant a release. It allows the cases to move forward with the debtor's chosen counsel and it brings some credibility and structure to the process, and that's what we believe is necessary here.

Thank you, Your Honor.

THE COURT: Thank you. Anyone else?

Mr. Sarkessian, do you want to give one last shot to Mr. Bromley?

MS. SARKESSIAN: Your Honor, I will say I take relentless as a compliment.

THE COURT: Okay. All right. Let me hear from the objectors.

MR. HODA: Thank you, Your Honor. Again, Marshal Hoda here on behalf of the objectors, Mr. Warren Winter and Mr. Richard Brummond.

Your Honor, our amended objection sets out four reasons why Sullivan & Cromwell should not be approved under Section 327 and Rule 2014. I'll provide a brief statement of those reasons here and point you to what we believe is good authority on which those reasons are based.

For clarity, Your Honor, I will group our four objections into two buckets. The first is what I call the investigative conflicts bucket. These objections turn ultimately on the nature of the FTX Groups preparation activities and the effect that context has on the decision to retain Sullivan & Cromwell in this matter.

The Debtor's CEO, John Ray III, Mr. John Ray III, respectfully, confirmed in his congressional testimony and in his supplemental declaration that the FTX Group was

engaged in "old fashioned embezzlement, just taking money from customers and using it for your own purposes." This included massive misappropriation of customer funds that were used for improper purposes, including what Mr. Ray described as a $5 billion "spending binge" that FTX Group went on in 2021 and 2022.

Given these facts of course, every prepetition transaction must be investigated and every potential estate claim considered. This includes the actions of the Debtor's current and former executives and the third-party professionals and firms who advised them as the spending spree played itself out.

We know from Sullivan & Cromwell's own disclosures that the firm advised the FTX Group in several of the large transactions it made during the spending binge. We also know that two former Sullivan & Cromwell lawyers were amongst the FTX Groups top ranking legal officers. Finally, we know that a number of current and former Sullivan & Cromwell clients were amongst the FTX Group's business partners.

With this background in mind, the thrust of the investigative objections comes into view. Sullivan & Cromwell has extensive, actual, and potential conflicts created by the necessity of investigating its own role in the FTX Group's prepetition activities, the activities of

former Sullivan & Cromwell lawyers at the top of the FTX Group's internal legal structure, and the activities of various of Sullivan & Cromwell's own current and former clients.

I'll just briefly point out some of the authorities we cite on these points, Your Honor. In particular, the Bohac case and the Git-N-Go case.

In Bohac, a Second Circuit decision, the question was whether a lawyer who was "close personal friends and business associates" with the board chairman of the bankrupt entity could serve as counsel when there were questions about the chairman's liability for prepetition participation and fraudulent transactions.

The Court held that he could not because "an attorney who has been closely related by professional, business, and personal ties to those whose conduct may now be suspect is evidently in no position to make any objective appraisal of the nature and extent of their involvement."

Similarly, in Git-N-Go, the question was whether a law firm that had advised the debtor in various prepetition corporate transactions that had come under suspicion could be appointed as bankruptcy counsel under Section 327. The court denied the firm's application, writing that having counseled some of the parties in the very transactions that "deserved examination", the firm could not "provide the

objective and independent advice regarding the validity or propriety of these transactions as is required for the Debtor's performance of its fiduciary obligations."

Your Honor, we believe these cases dictate the result here just as the firms seeking to be retained in Bohac and Git-N-Go were found to be unable to objectively investigate and advise about transactions in which they had personally participated or about the actions of persons with whom they had deep personal and professional ties, Sullivan & Cromwell will not be able to objectively advise the Debtors as to the issues raised by the FTX Group's spending binge and the conduct of former Sullivan & Cromwell lawyers.

Next, Your Honor, I'll turn to the other bucket, which is the preference claim.

Mr. Dietderich's original declaration revealed a pattern of payments by the FTX Group to Sullivan & Cromwell that showed a marked jump on November 3rd of 2022 just after the FTX crisis began and shortly before the FTX Group declared bankruptcy.

In light of the additional disclosures that were offered in the supplemental declaration, some of those concerns have been ameliorated. We would note that we did not have the benefit of those supplemental disclosures at the time the objection deadline passed.

Nevertheless, Mr. Dietderich's supplemental

declaration continues to show inconsistencies that we believe require a ruling on the preference issue. It notes, for instance, Sullivan & Cromwell received a $4 million retainer from the FTX Group on November 9th, more than $2.4 million of which was used to pay down unspecified prepetition invoices.

Finally, in the Friedberg declaration for which we have made an offer of proof today, or at least an offer to investigate further, allegations were made that these payments were improperly taken from Sullivan entities in what can only be described as unusual circumstances.

Your Honor, briefly on this point, the cases make clear that the court takes all facts and circumstances into account when considering whether a payment in the preference period was made in the ordinary course of business. Courts consider factors such as the timing of the payment and whether it constituted a deviation from the pattern of prior payments where there was an ongoing relationship. The First Jersey Securities case, with which the Court will certainly be familiar, is an archetypical example.

It is also the case under Pillowtex that the preference analysis must be carried out before retention of a firm under Section 327. Accordingly, we request that the Court issue a ruling on the preference issue as part of its consideration of Sullivan & Cromwell's application.

That is the sum and substance of our arguments. I will leave the Court with one last point before closing.

In its reply and in counsel's argument today and various arguments that have been offered in Mr. Ray's declaration and supplemental declaration in support of the retention of Sullivan & Cromwell, many have pointed to the practical benefits of retaining Sullivan & Cromwell because of its existing familiarity with the business and the work that it has already done.

With due respect to the work that has been done and due respect to those who have done it, I would point out that the Third Circuit has expressly rejected such arguments are relevant under Section 327. The important case here is Price Waterhouse. There, the debtor sought to retain Price Waterhouse as their accountant and financial advisor. They selected the firm precisely because it had provided them with prepetition services and thus developed expertise regarding their financial affairs and needs. At the same time, the debtors and Price Waterhouse acknowledged that the firm was a creditor of the Debtors and thus prima facie ineligible for appointment under Section 327.

Writing for the Third Circuit, then Judge Alito noted that the debtors had "stressed the practical benefits" of employing Price Waterhouse, but rejected that argument as inconsistent with the plain language of Section 327, which

of course as Your Honor knows requires disinterestedness in all cases. The court held that all professionals must meet the disinterestedness standard and noted "bankruptcy courts cannot use equitable principles to disregard unambiguous statutory language."

We would also note, practically speaking, that with due respect to the work that has been done, given the availability of other large firms, it is not impossible to conceive that Sullivan & Cromwell would be replaced as counsel in this case. I was told once that when you find yourself in a hole, stop digging. And perhaps that is what should be done here.

Finally, we would note that in response to many of the objections we have raised, Sullivan & Cromwell has noted that it will use conflicts counsel to investigate certain matters in which the firm itself may have been involved or former partners of the firm may have been involved or in which current and former clients of Sullivan & Cromwell may have been involved.

I would note, Your Honor, that that limitation appears nowhere in the proposed order, as it was originally submitted or as it was resubmitted last night and that those representations were only made after our objection essentially forced the firm to go on the record about these matters.

So we would urge the Court for all those reasons to reject Sullivan & Cromwell's application. And in the event that the Court does approve the application, we would urge the Court to add language making explicit that in those certain categories that there should be carveouts in which Sullivan & Cromwell will not be involved in investigation.

And with that, Your Honor, I would conclude my argument and would be happy to take any questions.

THE COURT: No questions. Thank you. Mr. Bromley, any response?

MR. BROMLEY: Your Honor, I just have a couple of minor points in response.

With all due respect to Mr. Hoda, it's clear that he has not practiced in bankruptcy court and understands the way things work here. We have from the very beginning of this case had, from the very moment that Quinn Emanuel was hired, made it clear that they are available to do matters that Sullivan & Cromwell, for one reason or another, might not be able to do. And to the extent that Sullivan & Cromwell, Quinn Emanuel, and the Landis firm are unable do it and Paul Hastings is unable to do it, there are other firms that would be available to Mr. Ray to do it. So the mere fact -- and I know we'd like to take credit for the concept of conflicts counsel in bankruptcy cases, but that's been something that's been going on for decades.

With respect to the two cases that he cited, Bohac and Git-N-Go, first of all, they are so fundamentally different that it bears repeating or noting. First of all, they're not Third Circuit controlling precedent. But the Git-N-Go case, which is a bankruptcy court Northern District of Oklahoma case from 2004, basically what the Court noted was that the debtor's relationship with a client of the proposed debtor's counsel permeates every -- almost every aspect of the case. Issues of characterization of debt, inequity, of allocation of resources, of the validity and sufficiency of consideration, and the court goes on. This is a small case with a small firm that had an extraordinarily large client that was a counterparty to the debtor. That is not the situation that is faced here.

The Bohac case is an interesting one as well, because facts make the law. Right, Your Honor? And this -- well, being a Second Circuit case from 1979, it notes that among other connections, that the partner in the law firm and the individual who control the debtor are the only remaining officers of the debtor. Even the law firm conceded that the personal ties with the individual who controlled the debtor and the financial stake in the company are unusual.

This is not a situation where anyone from Sullivan & Cromwell is on the board of directors or controls this

company or had any role in that way, shape, or form. So with all due respect, Your Honor, we believe the Bohac and Git-N-Go cases are inapposite in this situation.

We believe, Your Honor, that we have satisfied all of the requirements of Section 327(a), disinterestedness, of being a disinterested person and not holding an interest adverse to the Debtors. We believe that the extensive work that we did with the U.S. Trustee's Office to cure problems that they had with respect to the disclosure is an obvious indication that that work has been done and been done successfully.

So, Your Honor, we ask that the Court enter an order approving the retention of Sullivan & Cromwell.

THE COURT: Thank you. All right. I'm going to take a short recess. I'll come back and I'll give you my ruling. Let's take a 30-minute recess.

(Recess)

CLERK: All rise.

THE COURT: Thank you. Please be seated. All right.

Well, the issue before me is the motion to retain Sullivan & Cromwell as counsel for the Debtors in these cases. Section 327(a) provides that the debtor may retain professionals that do not hold or represent an interest adverse to the estate and that are disinterested persons.

Mr. Winter and Mr. Brummond have objected to the retention of Sullivan & Cromwell as counsel to the Debtors based on several issues. For the reasons I will discuss in a moment, I am going to overrule those objections and approve the retention.

First, the objectors argue that because Sullivan & Cromwell represented Debtors prepetition, there is a potential conflict of interest with any of the matters with which Sullivan & Cromwell was involved that might require an investigation. Of course 1107(b) of the Code tells us that just because a professional is sought to be retained who may have done work for the Debtor prepetition is not automatically disqualifying.

In addition, they argue that because two former Sullivan & Cromwell attorneys worked for the Debtors prepetition and because clients of Sullivan & Cromwell may be creditors of the Debtors in these cases that they have a conflict of interest and cannot be retained.

As a preliminary matter, there is nothing in the record before me to indicate that any investigation would be required of those transactions with which Sullivan & Cromwell might have been involved. Moreover, even if they were, Debtors have retained conflict counsel to conduct any investigation that might touch on those issues.

There is no evidence of any actual conflict here.

To the extent there may be a potential conflict requiring an investigation, for example, of one of the transactions that were involved or an investigation of the attorneys who were former Sullivan & Cromwell attorneys, those are ameliorated -- those are only potential conflicts. And the Third Circuit has said that a potential conflict is not per se disqualifying. That's In re Boy Scouts of America, 35 F.4th 149, 157 (2022).

Here, any potential conflicts are ameliorated by the fact that there is conflicts counsel in place. And that's something that happens in every large bankruptcy case. It would be almost impossible to find a case of this size, or even -- this is what we call a super-mega case, even in a mega case even find -- or a large case, it would be difficult to find debtor's counsel that didn't have other clients who might be clients of the debtor's counsel. But that's why we have conflicts counsel. It happens all the time. Not something that is disqualifying.

The objectors point me to the Bohac and the Git-N-Go cases to show that where there is a significant relationship with persons involved -- and in this case it would be the two counsel who previously worked for S&C -- that there is a disqualifying conflict. Those cases are significantly different than this case. Small firms, big cases where it represents a huge amount of their case, for

example. Or, excuse me, a huge amount of their income, for example.

And this case is significantly different because here I have Mr. Ray and four independent directors appointed by Mr. Ray who are all consummate professionals, who were not involved in the company's collapse, who did -- and there's no evidence that Mr. Miller or Mr. Wilson are involved in the management of the Debtors at this time. There is simply nothing in the record that would lead me to believe that Mr. Ray and the independent directors would not -- and by the way, they are the ones running the Debtors here, not Sullivan & Cromwell. Mr. Ray is the one who runs the Debtors. He makes the decisions with his board.

So I have no concerns about any potential conflicts of interest that would require me to disqualify Sullivan & Cromwell in this case.

The second basis for the objector's request that I deny the retention is the potential for a preference. And they point to a $4 million retainer, a portion of which was used to pay prepetition invoices that was given to Sullivan & Cromwell prior to the filing of the bankruptcy. And the objectors argue this creates a Pillowtex issue showing that Sullivan & Cromwell holds an interest adverse to the Debtors.

Mr. Dietderich's testimony, through his

declaration, which was unchallenged, clearly shows that based upon the payment history between the Debtors and Sullivan & Cromwell, the payments were made -- the payments made within the 90-day preference period constitute ordinary course payments and therefore would not constitute preferences that would be recoverable by the debtors in these cases.

With that, as I said, I'm going to overrule the objection and I will enter the order appointing -- excuse me, approving the retention of Sullivan & Cromwell.

Are there any questions?

MR. BROMLEY: None from the Debtors, Your Honor.

MR. HODA: Thank you for hearing us here today, Your Honor.

THE COURT: Thank you. All right. Anything else today before we adjourn? I thought I was going to get out of here.

MR. GLUECKSTEIN: Good morning, Your Honor. We can, but I think very briefly for --

THE COURT: Oh, we have the status conference.

MR. GLUECKSTEIN: Brian Glueckstein, Sullivan & Cromwell, for the Debtors. The only other item on the agenda, Your Honor, is just the status conference that the Court requested I think just more by way of an update after the second day hearing last week with respect to the

redaction and creditor matrix related issues that were addressed at that hearing. The Court, and we thank the Court, did enter an order this morning approving that motion on a final basis including the three month authorization to redact information with respect to all customers of the FTX debtors.

I did want to just address very briefly there were I believe three questions that Your Honor had asked about that we provided an update on today, the first of which was whether confirmation whether the Debtors in providing their creditor matrix and related filings with the court can distinguish between customers and other creditors.

The answer to that, Your Honor, is yes. Our top 50 creditor list that's on file had done that with respect to non-customer creditors. We did file an amended creditor top 50 list last evening for the dot-com silo that unredacted as we discussed at the hearing last week, the publicly-disclosed information about the members of the Official Committee of Unsecured Creditors in addition to any information about the non-customer, non-individual creditors on that list.

But let me address very briefly the creditor matrix. And I know that the Office of the U.S. Trustee is an issue that they are focused on as well. I think that's where this distinction and the redaction issues is most

relevant, at least immediately.

Your Honor, the Debtors have now assembled a full creditor matrix that has more than $9.7 million potential creditors on it, including customers. There are still some potential names being identified. We do expect, Your Honor, to file, in accordance with the Court's order, a redacted version of the creditor matrix very early next week. We're targeting Monday now that we have that information.

There are a relatively small number of non-customer creditors across the debtor silos, approximately 7,000 or so. So the number we're talking about here, it's a very small percentage that are non-customers. But there are some such creditors of course where vendors, employees, contract counterparties, loan counterparties, and other creditors who are not customers.

Even with in that 7,000, however, there is some significant overlap between what we're calling our customer list and creditors who have relationships with the Debtors in other capacities, including vendors -- I'm sorry, employees, contract counterparties who are also customers of the Debtors. So anybody who is a customer at all is being redacted. And obviously the terms that are set forth in the order will be complied with.

Your Honor, one thing I do want to note with respect to the creditor matrix -- and I know this is

important and this is a practical issue -- the debtors are going to file or are intending to file, as is set forth in the order or are required to file unredacted versions under seal of documents where reactions have been made and to provide those unredacted copies to the Office of the United States Trustee, the Committee, and others as provided for in the order. And we are going to do that.

The issue with respect to the creditor matrix, however, Your Honor, is a practical one that I want to just put on the record.

The 9.5-plus million entries on the creditor matrix makes it pretty close to impossible. I am informed by the technical experts that the full matrix, if we were to put it in kind of a PDF document form would be something like 150,000 pages and would need to be filed as many dozens of separate files due to size limitations and things like that to file it under seal with the Court.

As a result, what we are able to do is to provide the matrix in links to about 18 to 20 maxed out Excel files containing about 500,000 rows each to the U.S. Trustee and to the Court so that they can be accessible. And those files will be hosted by Kroll, our claims agent. So we will be able to access the full creditor matrix. But I think as a practical matter, it's not really possible to put the entirety of that nine million names under seal on the docket

per se. But we will be able to make it available to the Court by just linking on the files. All the other documents that we are redacting names from, customer names from, certainly we will file full unredacted copies under seal.

THE COURT: Okay.

MR. GLUECKSTEIN: The second question the Court asked and we just briefly addressed was just to confirm whether full identifying information for the non-individual, non-GDPR, non-customer creditors. So for the institutions who are not customers, will that information be unredacted and fully provided as required by the bankruptcy rules. And the answer to that is yes. As I stated, we will do that with respect to the creditor matrix and on the filings and are in the process of doing that.

The third issue, Your Honor, that you raise that came up in the discussion at the end of the hearing on this motion last week was what the Debtors are able to do in terms of identifying non-customer creditors who need to be redacted under the current order, under the portion of that order permitting redactions to comply with the GDPR. And on that, Your Honor, I can report that the Debtors do have some ability to identify those non-customer individual creditors who are protected by the GDPR from their books and records, but certainly not all. For a number of the non-customer individual creditors, the Debtors do not have physical

addresses on file that would allow us to identify whether the people are located in one jurisdiction versus another. And what we're intending to do, Your Honor, is to address this in two ways. Identifying from a combination of the Debtors books and records where we can those individual non-customers that under the current order need to have their names redacted, and we are also intending to give notice to the affected non-customer individual creditors -- it's only about 2,000 people which, you know, it's not insignificant, but compared to the nine-and-a-half million at this time since we're redacting in full all of the customers -- notice and an opportunity to contact the Debtors to provide information to us to effectively self-verify that they are protected by the GDPR and should be redacted. We expect that process to only take a short period of time, at which point anybody who is not identified and otherwise covered by the order would be unredacted from filings going forward.

Lastly, Your Honor, I just want to address briefly there was -- I mentioned that we filed the revised top 50 list with respect to the committee members last evening. We are also evaluating the docket as to any other customers who have appeared in this case who have self-identified as such, to redact those names from redacted filings going forward.

There was a letter that was submitted to the Court by counsel for the media objectors on January 18th

suggesting, as I read it, that the debtors go much further than that and somehow looked to social media and twitter and third-party websites for statements that would identify customers publicly. We submit, Your Honor, that that would be impractical and not appropriate. We think that the way to proceed on this, as we said, if people are free to self-identify, if customers identify themselves or appear in this case, identify themselves as customers, there would be no need obviously for us to redact them any longer. But we don't think it would be appropriate to have us go out into sources other than this Court's docket to identify those customers and un-redact them.

So those were the points I had to address, Your Honor, in response to the questions that the Court raised at the hearing last week. Happy to answer any questions.

THE COURT: Thank you. No questions at this time. Let me hear from Ms. Sarkessian. Anything from the U.S. Trustee?

Then I'm going to turn to -- I received a letter from Mr. Finger, who represents the media parties who had a conflict with another hearing downstate today, and he asked to participate by video conference. And since he's only participating in the status conference portion of this, which according to my chambers procedures can be done virtually, I gave him permission to appear virtually. So I

just want to make sure that everyone understands why I'm doing that.

MS. SARKESSIAN: Yes, Your Honor. Juliet Sarkessian for the U.S. Trustee.

I guess the only question I would -- I appreciate the explanation Debtor's counsel has provided on these issues. The only question I would have is what they are proposing with respect to the links for the Court. I don't know if that's satisfactory to the Court or the clerk's office. But as far as being provided to the U.S. Trustee, I mean, I'm willing to try. And hopefully that will work. But I don't know if that's -- in terms of what the court record is, whether -- or the creditor matrix whether having those links are sufficient or whether something more is needed or different is needed.

THE COURT: Yeah. I might need to discuss that with the Clerk's office to see the best way to handle that. 150,000 page PDF is a bit too much I think. But I'll check with the clerk and see what recommendation they can make about how to deal with that.

MS. SARKESSIAN: Thank you, Your Honor.

THE COURT: I appreciate you pointing that out.

Mr. Finger, are you on the line? Not on the line. Okay.

On the issue Mr. Glueckstein raised about the

requirement for the Debtor to go out and scour social media to see whether or not some customer has self-identified, I think that is a bridge too far. I don't think you need to undertake that as a part of your obligation to disclose these names. If someone self-identifies on the record by filing something on the docket, that's obviously a different story. But I'm not going to make you scour through millions of tweets and whatever else is out there to see if you can find people who self-identified as a customer of FTX.

MR. GLUECKSTEIN: Thank you, Your Honor. Appreciate that clarification. And with respect to the creditor matrix, we're happy to speak with the clerk's office and make sure they understand what we're proposing and that it works for the Court. And if there are other solutions, we're happy to do them. But it's simply just a practical issue given the volume here we're talking about of what's effectively 9.7 million rows that, you know, can't be just exported to a PDF.

THE COURT: I understand.

MR. GLUECKSTEIN: Thank you, Your Honor.

THE COURT: Okay, thank you. Anything else before we adjourn?

MR. LANDIS: Your Honor, for the record, Adam Landis from Landis Rath & Cobb. We have uploaded to chambers the form or order for the Sullivan & Cromwell

retention in the form that's acceptable to the parties.

THE COURT: All right. We'll get that entered right away.

All right, thank you all very much. We are adjourned.

(Whereupon these proceedings were concluded at 12:10 PM)

I N D E X

RULINGS

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

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Date: April 24, 2023